

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

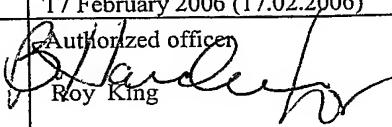
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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| Applicant's or agent's file reference 12854-20392 | | FOR FURTHER ACTION See Form PCT/IPEA/416 | | | | | | | | | | | | | | | | | | | | | | | | | |
| International application No. PCT/US05/08995 | | International filing date (day/month/year) 18 March 2005 (18.03.2005) | Priority date (day/month/year) 19 March 2004 (19.03.2004) | | | | | | | | | | | | | | | | | | | | | | | | |
| International Patent Classification (IPC) or national classification and IPC IPC: E21B 43/28(2006.01) USPC: 75/712,711,743 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Applicant NEWMONT USA LIMITED | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>3</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of ___ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) ___ , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> <p>4. This report contains indications relating to the following items:</p> <table> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table> | | | | <input checked="" type="checkbox"/> | Box No. I | Basis of the report | <input type="checkbox"/> | Box No. II | Priority | <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability | <input type="checkbox"/> | Box No. IV | Lack of unity of invention | <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement | <input type="checkbox"/> | Box No. VI | Certain documents cited | <input type="checkbox"/> | Box No. VII | Certain defects in the international application | <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. II | Priority | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. VI | Certain documents cited | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application | | | | | | | | | | | | | | | | | | | | | | | | | |
| Date of submission of the demand 17 October 2005 (17.10.2005) | | Date of completion of this report 17 February 2006 (17.02.2006) | | | | | | | | | | | | | | | | | | | | | | | | | |
| Name and mailing address of the IPEA/ US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201 | | <p>Authorized officer  Roy King Telephone No. 571-272-1700</p> | | | | | | | | | | | | | | | | | | | | | | | | | |

Box No. I Basis of the report

1. With regard to the language, this report is based on:

the international application in the language in which it was filed.

a translation of the international application into English, which is the language of a translation furnished for the purposes of:

- international search (under Rules 12.3 and 23.1(b))
- publication of the international application (under Rule 12.4(a))
- international preliminary examination (under Rules 55.2(a) and/or 55.3(a))

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

the international application as originally filed/furnished

the description:

pages 1-17 as originally filed/furnished
 pages* NONE received by this Authority on _____
 pages* NONE received by this Authority on _____

the claims:

pages 18-22 as originally filed/furnished
 pages* NONE as amended (together with any statement) under Article 19
 pages* NONE received by this Authority on _____
 pages* NONE received by this Authority on _____

the drawings:

pages 1-7 as originally filed/furnished
 pages* NONE received by this Authority on _____
 pages* NONE received by this Authority on _____

a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. The amendments have resulted in the cancellation of:

- the description, pages _____
- the claims, Nos. _____
- the drawings, sheets/figs _____
- the sequence listing (*specify*): _____
- any table(s) related to the sequence listing (*specify*): _____

4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- the description, pages _____
- the claims, Nos. _____
- the drawings, sheets/figs _____
- the sequence listing (*specify*): _____
- any table(s) related to the sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/US05/08995

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|----------------------------|-----|
| Novelty (N) | Claims <u>4-7</u> | YES |
| | Claims <u>1-3 and 8-54</u> | NO |
| Inventive Step (IS) | Claims <u>NONE</u> | YES |
| | Claims <u>1-54</u> | NO |
| Industrial Applicability (IA) | Claims <u>1-54</u> | YES |
| | Claims <u>NONE</u> | NO |

2. Citations and Explanations (Rule 70.7)

Claims 1-3 and 8-54 lack novelty under PCT Article 33(2) as being anticipated by Lesty et al. Lesty et al teaches forming a heap for heap leaching, well formation, surveying the heap and adjusting the leaching to further leach incompletely leached sections of the heap where the material to be extracted can be any desired type of material including gold, copper or a base metal, thereby showing all aspects of the above claims.

Claims 4-7 lack an inventive step under PCT Article 33(3) as being obvious over Lesty et al in view of Bodine. As applied to claim 1 above, Lesty et al shows all aspects of the above claims except the use of a fracture process for enhancing the extractive capabilities of the leachant in the heap. Bodine teaches that by inducing cracks or fracture in the heap, leachant can more easily access areas of the heap which are insufficiently leached. The manner of induction of the fracture, whether through hydraulic means or sonic means as taught by Bodine, are not seen to impart any inventive difference in the process as a whole since the results of both fracture processes are substantially the same. Because improved leachant capabilities are also desirable in Lesty et al, motivation to include a fracture step, as disclosed by Bodine, would not have required an inventive step to one of ordinary skill in the art at the time the invention was made.

Claims 1-54 meet the criteria set out in PCT Article 33(4), and thus possess industrial applicability because the subject matter claimed can be made or used in industry.

Applicant's arguments that the surveying conducted by Lesty et al is different than that conducted by the instant claims has been considered but is not persuasive because the instant claims do not restrict the surveying method of Lesty et al, which also is employed to improve the leaching capabilities of the process of Lesty et al. Applicant's further argument that Lesty et al does not include fracturing is not persuasive since Bodine is cited to teach this feature.

----- NEW CITATIONS -----